



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LOTUS PROPERTY SERVICES,
INC.,

Plaintiff,

v.

VISPY HOSI PANTHAKI, aka Vispi
Hosi Panthaki, Does 1 to 10, inclusive,

Defendants.

Case No. CV 17-00895-PSG (RAOx)

**ORDER REMANDING ACTION
AND DENYING APPLICATION
TO PROCEED WITHOUT
PREPAYING FEES OR COSTS**

I.

FACTUAL BACKGROUND

Plaintiff Lotus Property Services, Inc. ("Plaintiff") filed an unlawful detainer action in Los Angeles County Superior Court against Vispy Hosi Panthaki and Does 1 to 10 ("Defendants") on or about December 30, 2016. Notice of Removal ("Removal") & Attached Complaint for Unlawful Detainer ("Compl.") and Answer, Dkt. No. 1. Defendants are allegedly unauthorized subtenants of real property located in Arcadia, California ("the property"). Compl., ¶¶ 3, 6. Plaintiff is the agent for the owner of the property. *Id.* at ¶¶ 2, 4.

Defendant Panthaki filed a Notice of Removal on February 3, 2017, invoking the Court's federal question jurisdiction, asserting that Defendant's Answer to the

1 Complaint raises issues under federal law. Removal at 2. The same day, Defendant
 2 Panthaki filed an Application to Proceed Without Prepaying Fees or Costs. Dkt.
 3 No. 2.

4 **II.**

5 **DISCUSSION**

6 Federal courts are courts of limited jurisdiction, having subject matter
 7 jurisdiction only over matters authorized by the Constitution and statute. *See, e.g.*,
 8 *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375, 377, 114 S. Ct. 1673, 128
 9 L.Ed.2d 391 (1994). It is this Court's duty always to examine its own subject
 10 matter jurisdiction, *see Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S. Ct. 1235,
 11 163 L.Ed.2d 1097 (2006), and the Court may remand a case summarily if there is
 12 an obvious jurisdictional issue. *Cf. Scholastic Entm't, Inc. v. Fox Entm't Grp., Inc.*,
 13 336 F.3d 982, 985 (9th Cir. 2003) ("While a party is entitled to notice and an
 14 opportunity to respond when a court contemplates dismissing a claim on the merits,
 15 it is not so when the dismissal is for lack of subject matter jurisdiction.") (omitting
 16 internal citations). A defendant attempting to remove an action from state to
 17 federal court bears the burden of proving that jurisdiction exists. *See Scott v.*
 18 *Breeland*, 792 F.2d 925, 927 (9th Cir. 1986). Further, a "strong presumption"
 19 against removal jurisdiction exists. *See Gaus v. Miles, Inc.*, 980 F.2d 564, 567 (9th
 20 Cir. 1992).

21 As noted above, Defendant Panthaki asserts that this Court has subject matter
 22 jurisdiction due to the existence of a federal question. (Removal at 1, 7-8.) Section
 23 1441 provides, in relevant part, that a defendant may remove to federal court a civil
 24 action in state court of which the federal court has original jurisdiction. *See* 28
 25 U.S.C. § 1441(a). Section 1331 provides that federal "district courts shall have
 26 original jurisdiction of all civil actions arising under the Constitution, laws, or
 27 treaties of the United States." *See id.* § 1331.

28 ///

1 Here, the Court's review of the Notice of Removal and the attached
2 Complaint and Answer makes clear that this Court does not have federal question
3 jurisdiction over the instant matter. Plaintiff could not have brought this action in
4 federal court, in that Plaintiff does not allege facts supplying federal question
5 jurisdiction, and therefore, removal was improper. *See* 28 U.S.C. § 1441(a);
6 *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429, 96 L.Ed.2d
7 318 (1987) (“Only state-court actions that originally could have been filed in
8 federal court may be removed to federal court by the defendant.”) (footnote
9 omitted).

10 First, there is no federal question apparent on the face of Plaintiff's
11 complaint, which alleges only a simple unlawful detainer cause of action. *See*
12 *Wescom Credit Union v. Dudley*, No. CV 10-8203 GAF (SSx), 2010 WL 4916578,
13 *2 (C.D.Cal. Nov. 22, 2010) (“An unlawful detainer action does not arise under
14 federal law.”) (citation omitted); *IndyMac Federal Bank, F.S.B. v. Ocampo*, No.
15 EDCV 09-2337 PA(DTBx), 2010 WL 234828, at *2 (C.D.Cal. Jan. 13, 2010)
16 (remanding an action to state court for lack of subject matter jurisdiction where
17 plaintiff's complaint contained only an unlawful detainer claim).

18 Second, there is no merit to Defendant's contention that federal question
19 jurisdiction exists because Defendant's Answer raises issues of federal law.
20 Removal at 2. It is well settled that a “case may not be removed to federal court on
21 the basis of a federal defense . . . even if the defense is anticipated in the plaintiff's
22 complaint, and even if both parties concede that the federal defense is the only
23 question truly at issue.” *Caterpillar*, 482 U.S. at 393, 107 S. Ct. at 2430. Thus, to
24 the extent Defendant's defenses to the unlawful detainer action are based on alleged
25 violations of federal law, those defenses do not provide a basis for federal question
26 jurisdiction. *See id.* Because Plaintiff's complaint does not present a federal
27 question, either on its face or as artfully pled, the court lacks jurisdiction under 28
28 U.S.C. § 1331.

III.

CONCLUSION

Accordingly, IT IS ORDERED that this case is REMANDED to the Superior Court of California, County of Los Angeles, forthwith.

IT IS FURTHER ORDERED that Defendant's Application to Proceed Without Prepaying Fees or Costs is DENIED as moot.

IT IS SO ORDERED.

DATED: 01/15/11

PHILIP S. GUTIERREZ
UNITED STATES DISTRICT JUDGE

Presented by:

R.O. OL
ROZELLA A. OLIVER
UNITED STATES MAG